



PUBLIC NOTICE

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**WIRELESS TELECOMMUNICATIONS BUREAU REQUESTS COMMENT ON JOINT
PETITION OF CTIA AND RCA REGARDING THE DECEMBER 31, 2005 DEADLINE FOR
LICENSEES EMPLOYING A HANDSET-BASED E911 PHASE II LOCATION TECHNOLOGY
TO ACHIEVE NINETY-FIVE PERCENT PENETRATION OF LOCATION-CAPABLE
HANDSETS AMONG THEIR SUBSCRIBERS**

WT Docket No. 05-288

Comments Due: October 21, 2005

Reply Comments Due: October 31, 2005

By this Public Notice, we seek comment on a joint petition filed by CTIA – The Wireless Association and the Rural Cellular Association (CTIA/RCA)¹ requesting relief of the requirement that wireless licensees that employ a handset-based Enhanced 911 (E911) Phase II location technology achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005, as required by Section 20.18(g)(1)(v) of the Commission's Rules.² Specifically, CTIA/RCA filed a joint petition seeking suspension or waiver of Section 20.18(g)(1)(v) for carriers which have met and continue to meet the one-hundred percent location-capable handset sale and activation requirement,³ until the carriers meet the ninety-five percent penetration threshold as a result of handset replacement and churn.⁴ CTIA/RCA cite to the following factors in support of their request: the reluctance of customers to replace existing handsets; the lack of E911 Phase II service availability in most communities; low churn rates; and the preferences of analog customers for the coverage advantage inherent in higher-power phones.⁵

¹ See Joint Petition of CTIA – The Wireless Association and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC Docket No. 94-102 (filed June 30, 2005) (CTIA/RCA Petition).

² 47 C.F.R. § 20.18(g)(1)(v).

³ See 47 C.F.R. § 20.18(g)(1)(iv).

⁴ See CTIA/RCA Petition at 1.

⁵ See *id.* at 2-6.

As an alternative to their request for generalized relief, CTIA/RCA request that the Commission establish a framework, based on certain criteria, for evaluating waiver requests. Specifically, CTIA/RCA propose that carriers would first have to demonstrate that they have met the sale and activation benchmarks and provide information related to their progress in meeting Phase II PSAP requests.⁶ Further, carriers would have to justify grant by showing any one of the following: (1) lower-than-forecast churn; (2) customer resistance to new handsets (by showing that more than five percent of their customers have not changed handsets in over three years); (3) substantial compliance (defined as eighty-five percent penetration as of December 31, 2005); (4) technology change (TDMA to GSM or CDMA); (5) network or handset technology failures; (6) customers' continued reliance on analog service coverage in very rural markets; or (7) agreement with PSAPs on alternative penetration schedules.⁷

We seek comment on the CTIA/RCA Petition, including their request for a general suspension of the handset penetration requirement as well as their proposed alternative criteria for addressing individualized requests for relief. Commenting parties should address the CTIA/RCA Petition relative to the Commission's stated policy that it is critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for ninety-five percent location-capable handset penetration, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II will be implemented and ensure that Phase II is fully implemented as quickly as possible.⁸ We stress that the issuance of this Public Notice should not be construed by any licensee as a reason to discontinue active efforts to timely achieve compliance, or to refrain from filing a properly supported request for relief in sufficient time for us to act before December 31, 2005.⁹

GENERAL INFORMATION

Comments must be filed no later than October 21, 2005, and reply comments must be filed no later than October 31, 2005. All filings concerning matters referenced in this Public Notice should refer to WT Docket No. 05-XXX. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/cgb/ecfs/>, (2) the Federal Government's eRulemaking Portal: <http://www.regulations.gov>, or (3) paper copies.¹⁰

⁶ See CTIA/RCA Petition at 11.

⁷ See *id.* at 12-15.

⁸ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14853 ¶ 38 (2002).

⁹ We note that the *ENHANCE 911 Act* requires that we address waiver requests filed by qualified Tier III carriers within 100 days of receipt. See National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991 (2004) (*ENHANCE 911 Act*) (directing the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within one-hundred days of receipt, and grant such request for waiver if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”). The *ENHANCE 911 Act* defines a “qualified Tier III carrier” as “a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001.” Accordingly, we will address requests from qualified Tier III carriers as statutory deadlines require, pursuant to existing policy, and notwithstanding the ultimate outcome of this proceeding.

¹⁰ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- ECFS Filers: If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full names, U.S. Postal Service mailing addresses, and the applicable docket or rulemaking number. Interested parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.
- eRulemaking Filers: Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

Copies of this public notice, and the petitions and *ex parte* notices noted herein will be posted on the web at http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi and will be available for public inspection and duplication during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies of the comments and other filings in this docket also may be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc. in person at 445 12th Street, SW, Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300 or (800) 378-3160, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This proceeding is designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and

¹¹ 47 C.F.R. §§ 1.1200(a), 1.1206.

arguments presented is generally required.¹² Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.¹³

For further information, contact David Siehl, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at (202) 418-0680.

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¹² 47 C.F.R. § 1.1206(b).

¹³ *Id.*